

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

OCT 18 2005

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE FOR
DONNA KAY EHLERS)
) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, RECOMMENDED ORDER
) AND ORDER
)
) CAUSE NO. A-1624
)

This matter came on for hearing on the 21st day of June, 2005, before Christine M. Neighbors, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The matter arises out of a denial of an application for a resident insurance producer's license. The Nebraska Department of Insurance ("Department") was represented by its attorney, Mike Boyd. Donna Kay Ehlers ("Applicant") was present and was represented by counsel, Rob Otte. The proceedings were tape recorded by Tracy Gruhn, a licensed Notary Public. The Rules of Evidence were not requested and the proceedings governed accordingly. Applicant presented evidence through her sworn testimony. The Department presented evidence through exhibits and the sworn testimony of Beverly Creager, Licensing Administrator. A number of objections were made and ruling deferred to this opinion. The matter was taken under advisement. The hearing officer hereby makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

2. On or about April 8, 2005, Applicant applied for a resident insurance producer's license to sell life insurance and annuities, sickness, accident and health. (Ex. 3). Applicant's current address is listed on the application as 1118 W. 6th Street, Grand Island, NE 68801.

3. In response to Part III, Question B, of the insurance producer license application, Applicant answered affirmatively to the question "[h]as any disciplinary action, including but not limited to, refusal, suspension, revocation, ever been taken by a regulatory agency in any state or province of Canada against you or any business with which you have been directly connected? If yes, provide full explanation on a separate sheet of paper. Although Applicant marked "Yes", no written explanation was attached to the application. (Ex 3).

4. On or about April 25, 2005, Beverly Creager, Licensing Administrator for the Department, notified Applicant that her application for an insurance producer's license was denied based on *Neb. Rev. Stat.* § 44-4059(1)(b) (violating any insurance law or rule, regulation, subpoena, or order of the director or of another state's insurance commissioner or director), and (1)(i) (having an insurance producer license, or its equivalent, denied, suspended, placed on probation, or revoked in Nebraska or in any other state, province, district, or territory), and *Neb. Rev. Stat.* §44-1525(11) (failing to respond to a written inquiry from the department within fifteen working days). (Ex. 8). In addition, Creager notified Applicant that she had thirty days from receipt of notification of denial to request a hearing on the matter as required by *Neb. Rev. Stat.* §44-4059(2).

5. On or about May 20, 2005, Applicant requested a hearing to appeal the denial of an insurance producer's license. (Ex. 1).

6. Applicant testified that she currently offers continuing education and pre-licensing education classes from her home in Grand Island. If licensed, Applicant would sell prepaid legal

service products and recruit people to train and sell said products in addition to offering continuing and pre-licensing education classes. Applicant applied for a life insurance and annuities, sickness, accident and health license because she thought it was necessary for her to hold that type of license in order to sell pre-paid legal insurance. During the course of the hearing, the parties determined that it was appropriate for the hearing officer to rule on the issue of whether Applicant should be granted a license for life insurance and annuities, sickness, accident and health and/or pre-paid legal insurance, which is a limited, miscellaneous license.

7. Applicant previously held an insurance producer's license. On January 12, 2001, her insurance producer's license was revoked when she issued a certificate of completion to an individual who did not complete the approved continuing education course. (Ex. 7). Applicant testified that at the time of the revocation she acknowledged wrongdoing and believed the Department had sufficient evidence to support its case.

8. Applicant testified that she was not aware of any reason, at this particular point in time, which would prevent her from getting a license. Further, Applicant testified that she had not violated any laws, to the best of her knowledge, and that she has "kept her nose clean and out of trouble" since the revocation. The hearing officer finds her testimony to lack credibility as Applicant also testified that in November 2003, she had again issued certificates of completion to an individual who did not attend the courses. Applicant's actions, as admitted, do not only violate the same insurance statute violated in the previous administrative action, but her willingness to perjure herself during the course of this license denial hearing is of utmost concern to the hearing officer. Pursuant to the language of *Neb. Rev. Stat.* §44-101, the business of insurance is "public in character and requires all those having to do with it shall at all times be actuated by good faith in

everything pertaining thereto, shall abstain from deceptive or misleading practices, and shall keep, observe and practice the principles of law and equity in all matters pertaining to such business.”

9. Although the exhibits referenced below were admitted at the hearing, the hearing officer also took Applicant’s objections under advisement and, upon further consideration, rules as follows:

a. Applicant objected to the admissibility of Exhibits 9, 10, 11, and 12 on the basis of surprise, the age of the documents, and relevance. Although the rules of evidence were not requested, the objection is sustained. Section 84-914(1) of the Nebraska Revised Statutes allows an agency to give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

b. Applicant also objected to the admissibility of Exhibits 4 and 6, which were represented as copies of Nebraska Revised Statutes §44-4053 and §44-4059, for the reason that a copy may be unreliable. Again, although the rules of evidence were not requested, this objection is sustained as the hearing officer may take notice of the law prevailing within this forum as well as general, technical, or scientific facts within its specialized knowledge. See Title 210 Nebraska Administrative Code, Chapter 25, Department Administration Practice and Procedure.

c. Applicant objected to the admissibility of Exhibit 5 as not relevant or material. Although the exhibit was authenticated by Beverly Creager, the objection is sustained. Exhibit 5 is not relevant.

CONCLUSIONS OF LAW

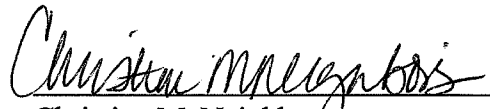
1. The Department has jurisdiction and control over the licensing of insurance producers to sell insurance in the State of Nebraska pursuant to *Neb. Rev. Stat. §44-101.01 and §44-4047 et seq.*
2. The Department has personal jurisdiction over Applicant.
3. The previous revocation in Cause No.: A-1421, the incomplete application, and Applicant's perjured testimony at hearing constitutes a sufficient basis to deny any license to Applicant pursuant to *Neb. Rev. Stat. §44-4059(1)(a), (h) and (i).*

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended to the Director of Insurance that the Director deny Applicant's request for licensing.

Dated this 4th day of August, 2005.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

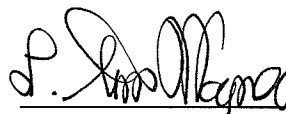

Christine M. Neighbors
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order, providing for the denial of Applicant's request for an insurance producer's license, is adopted as the official and final Order of this Department in The Matter of the Denial of Application for License for Donna Kay Ehlers, A-1624.

Dated this 18th day of October, 2005.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



L. TIM WAGNER
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Applicant, by mailing a copy to Applicant at 1118 W. 6th Street, Grand Island, NE 68801 by certified mail, return receipt requested, and to Applicant's counsel, Rob Otte, Morrow, Poppe, Otte, Watermeier & Phillips, P.C., P.O. Box 83439, Lincoln, NE 68501-3439 by U.S. Mail, postage prepaid on this 18th day of October, 2005.

